

# MASTER POWER PURCHASE AND SALE AGREEMENT

## COVER SHEET

This *Master Power Purchase and Sale Agreement (Version 2.1; modified 4/25/00)* ("Master Agreement") is made as of the following date: March 23, 2001 ("Effective Date"). The *Master Agreement*, together with the exhibits, schedules and any written supplements hereto, the Party A Tariff, if any, the Party B Tariff, if any, any designated collateral, credit support or margin agreement or similar arrangement between the Parties and all Transactions (including any confirmations accepted in accordance with Section 2.3 hereto) shall be referred to as the "Agreement." The Parties to this *Master Agreement* are the following:

Name ("Allegheny Energy Supply Company, LLC" or "Party A")

Name ("California Department of Water Resources, acting solely under the authority and powers created by AB1-X, codified as Sections 80000 through 80260 of the Water Code (the "Act"), and not under its powers and responsibilities with respect to the State Water Resources Development System" or "Party B")

All Notices:

All Notices: California Department of Water Resources

Street: 2 World Financial Center – 36<sup>th</sup> Floor

Street: 1416 Ninth Street

City: New York, New York Zip: 10080

City: Sacramento, California Zip: 95814

Attn: Contract Administration (Yair Yaish, Office of General Counsel)

Attn: Executive Manager Power Systems

Phone: 212 449 2456

Phone: (916) 653-5913

Facsimile: 212 449 6595

Facsimile: (916) 653-0267

Duns: 10-643-8018

Duns: \_\_\_\_\_

Federal Tax ID Number:

Federal Tax ID Number:

### **Invoices:**

Attn: John Protano

Phone: 212 449 4797

Facsimile: 212 449 0254

### **Invoices:**

Attn: Contracts Payable

Phone: (916) 653-6404

Facsimile: (916) 654-9882

### **Scheduling:**

Attn: Domenick Prisco

Phone: 212 449 4797

Facsimile: 212 449 0254

### **Scheduling:**

Attn: Chief Water and Power Dispatcher

Phone: (916) 574-2693

Facsimile: (916) 574-2569

### **Payments:**

Attn: John Protano

Phone: 212 449 4797

Facsimile: 212 449 0254

### **Payments:**

Attn: Cash Receipts Section

Phone: (916) 653-6892

Facsimile: (916) 654-9882

### **Wire Transfer:**

BNK:

ABA: #

ACCT: #

### **Wire Transfer:**

BNK:

ABA: Routing #

ACCT: #

**Credit and Collections:**

Attn: Tom Orr  
 Phone: 212 236 7314  
 Facsimile: 212 449 0254

With additional Notices of an Event of Default or  
 Potential Event of Default to:

Attn: Office of General Counsel  
 Phone: 212 449 2456  
 Facsimile: 212 449 0254

**Credit and Collections:**

Attn: Deputy Controller  
 Phone: : (916) 653-6148  
 Facsimile: (916) 653-8230

With additional Notices of an Event of Default or  
 Potential Event of Default to:

Attn: Deputy Controller  
 Phone: (916) 653-6148  
 Facsimile: (916) 653-8230

The Parties hereby agree that the General Terms and Conditions are incorporated herein, and to the following provisions as provided for in the General Terms and Conditions:

Party A Tariff      Tariff: Rate Schedule No. 1      Dated: December 28, 2000      Docket Number: ER01-811-000

Party B Tariff      Tariff      N/A      Dated \_\_\_\_\_      Docket Number \_\_\_\_\_

**Article Two**

Transaction Terms and Conditions      ☒ Optional provision in Section 2.4. If not checked, inapplicable.

**Article Four**

Remedies for Failure to Deliver or Receive      ☐ Accelerated Payment of Damages. If not checked, inapplicable.

**Article Five**

Events of Default; Remedies

☐ Cross Default for Party A:

☐ Party A: \_\_\_\_\_ Cross Default Amount \$ \_\_\_\_\_

☐ Other Entity: \_\_\_\_\_ Cross Default Amount \$ \_\_\_\_\_

☐ Cross Default for Party B:

☐ Party B: \_\_\_\_\_ Cross Default Amount \$ \_\_\_\_\_

☐ Other Entity: \_\_\_\_\_ Cross Default Amount \$ \_\_\_\_\_

**5.6 Closeout Setoff**

☒ Option A, set-off solely with respect to transactions entered into between Party A and Party B pursuant to the AB1-X legislation (as defined below).

☐ Option B - Affiliates shall have the meaning set forth in the Agreement unless otherwise specified as follows: \_\_\_\_\_

☐ Option C (No Setoff)

**Article 8**

Credit and Collateral Requirements

**8.1 Party A Credit Protection:**

(a) Financial Information:

☐ Option A

☐ Option B Specify: \_\_\_\_\_

☒ Option C Specify: annual audit, annual budget and all financial information sent to any seller under a power purchase agreement; Party B shall use reasonable commercial efforts to periodically prepare and make available to all sellers under power sales agreements, but not more frequently than quarterly, financial information reasonably intended to apprise all such sellers of the financial condition of the Fund. Party B shall provide to Party A, promptly upon request, a detailed statement of the status of the Fund, the total assets contained in the Fund, a statement of its short term and long term liabilities, with a statement by Party B whether it believes that that Fund has or will have assets adequate to satisfy such liabilities.

(b) Credit Assurances:

☒ Not Applicable  
☐ Applicable

(c) Collateral Threshold:

☒ Not Applicable  
☐ Applicable

If applicable, complete the following:

Party B Collateral Threshold: \$ \_\_\_\_\_; provided, however, that Party B's Collateral Threshold shall be zero if an Event of Default or Potential Event of Default with respect to Party B has occurred and is continuing.

Party B Independent Amount: \$ \_\_\_\_\_

Party B Rounding Amount: \$ \_\_\_\_\_

(d) Downgrade Event:

☒ Not Applicable  
☐ Applicable

If applicable, complete the following:

☐ It shall be a Downgrade Event for Party B if Party B's Credit Rating falls below \_\_\_\_\_ from S&P or \_\_\_\_\_ from Moody's or if Party B is not rated by either S&P or Moody's

☐ Other:  
Specify: \_\_\_\_\_

(e) Guarantor for Party B: Not Applicable

Guarantee Amount: \_\_\_\_\_

## 8.2 Party B Credit Protection:

(a) Financial Information:

☐ Option A  
☒ Option B Specify: Allegheny Energy, Inc.

☐ Option C Specify: \_\_\_\_\_

(b) Credit Assurances:

☒ Not Applicable

☐ Applicable

(c) Collateral Threshold:

☒ Not Applicable

☐ Applicable

If applicable, complete the following:

Party A Collateral Threshold: \$ \_\_\_\_\_; provided, however, that Party A's Collateral Threshold shall be zero if an Event of Default or Potential Event of Default with respect to Party A has occurred and is continuing.

Party A Independent Amount: \$ \_\_\_\_\_

Party A Rounding Amount: \$ \_\_\_\_\_

(d) Downgrade Event:

☒ Not Applicable

☐ Applicable

If applicable, complete the following:

☐ It shall be a Downgrade Event for Party A if Party A's Credit Rating falls below \_\_\_\_\_ from S&P or \_\_\_\_\_ from Moody's or if Party A is not rated by either S&P or Moody's

☐ Other:  
Specify: \_\_\_\_\_

(e) Guarantor for Party A: Not Applicable

Guarantee Amount: \_\_\_\_\_

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#### **Article 10**

Confidentiality

☒ Confidentiality Applicable

If not checked, inapplicable.

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#### **Schedule M**

☐ Party A is a Governmental Entity or Public Power System

☒ Party B is a Governmental Entity or Public Power System

☐ Add Section 3.6. If not checked, inapplicable

☐ Add Section 8.6. If not checked, inapplicable

**Other Changes** Specify, if any:

**(a) Definitions.**

- (1) Section 1.11 is amended by adding the following sentence at the end of the current definition: "The Non-Defaulting Party shall use commercially reasonable efforts to mitigate or eliminate these Costs."
- (2) Section 1.23 is amended by adding the following sentence at the end of the current definition:

“Notwithstanding anything else in this section, with respect to Party A, a Force Majeure event shall be deemed to exist if any portion of the Generating Units shall be taken or otherwise adversely affected by eminent domain, condemnation or similar action by or on behalf, whether directly or indirectly, of the State of California or any agency, department or other entity constituting a part of the government of the State of California (including the State of California, a “State Authority”) or by any municipality, county or other non federal governmental authority located within the boundaries or under the control of the State of California acting upon the mandate, request or approval of a State Authority.”
- (3) Section 1.51, "Replacement Price" shall be amended on the fifth line by deleting the phrase "at Buyer's option" and inserting the following phrase: "absent a purchase".
- (4) Section 1.53, "Sales Price" shall be amended on the fifth line by deleting the phrase "at Seller's option" and inserting the following phrase: "absent a sale".
- (5) Sections 1.6, 1.24, 1.28, 1.33, 1.34, 1.35, 1.36, 1.43, 1.44, 1.48 and 1.56 are amended by deleting the text in each of such sections and substituting therefor "[Intentionally omitted.]"
- (6) Section 1.59 is amended by changing "Section 5.3" to "Section 5.2."
- (7) Section 1.60 is amended by deleting such definition and replacing with the following: “All references to ‘Transaction,’ whether in the plural or singular, shall mean only the 2001A Transaction and any other Transaction entered into between Party A and Party B pursuant to the AB1X legislation.”
- (8) A definition of AB1X is added to the definitions as follows: “ ‘**AB1X**’ means Assembly Bill Number ABX1, 1<sup>st</sup> Extraordinary Session of the California State Legislature, enacted February 1, 2001.
- (9) Sections 1.62 through 1.69 are added to Article One as follows:
  - 1.62 "Fund" means the Department of Water Resources Electric Power Fund established by Section 80200 of the Water Code.
  - 1.63 "Market Quotation Average Price" shall mean the average of the good faith quotations solicited from not less than three (3) Reference Market-makers; provided, however, that the Party soliciting such quotations shall use commercially reasonable efforts to obtain good faith quotations from at least five (5) Reference Market-makers and, if at least five (5) such quotations are obtained, the Market Quotation Average Price shall be determined disregarding the highest and lowest quotations.
  - 1.64 "Market Value" shall have the meaning set forth in Section 5.3.
  - 1.65 "Per Unit Market Price" means the applicable price per MWh determined in accordance with Section 5.3.
  - 1.66 "Reference Market-maker" means any marketer, trader or seller of or dealer in firm energy products whose long-term unsecured senior debt is rated BBB or better by Standard & Poor’s Rating Group (a division of McGraw-Hill, Inc.), or its successor, and Baa2 or better by Moody's Investor Services, Inc., or its successor.

1.67 "Replacement Contract" means a contract having a term, quantity, delivery rate, delivery point and product substantially similar to the remaining Term, quantity, delivery rate, Delivery Point and Product to be provided under this Agreement.

1.68 "2001A Transaction" means the Transaction described in the attached Confirmation dated March 2, 2001.

1.69 "Trust Estate" means all revenues under any obligation entered into, and rights to receive the same, and moneys on deposit in the Fund and income or revenue derived from the investment thereof.

**(b) Transactions.** The Transaction shall be in writing and this agreement may not be orally amended or modified, including by Recording pursuant to Section 2.5.

**(c) Governing Terms.** Section 2.2 is amended by adding the following sentence at the end of the current section:

"Notwithstanding the foregoing, the 2001A Transaction shall be treated as a stand-alone Transaction and accordingly, (a) provisions in the Master Agreement referring to offsetting or netting multiple Transactions shall not be applicable to the 2001A Transaction, and (b) an Event of Default or Potential Event of Default with respect to any transaction other than the 2001A Transaction shall not affect the 2001A Transaction. Except for the attached Confirmation dated March 2, 2001, no provision of any Confirmation entered into pursuant to Section 2.4 shall affect the 2001A Transaction."

**(d) Declaration of an Early Termination Date and Calculation of Termination Payment.**

(1) The last sentence of Section 5.2 is replaced in its entirety by the following: "The Non-Defaulting Party shall be entitled to a payment upon termination of this Transaction as the result of an Event of Default (the "Termination Payment") which shall be the aggregate of the Market Value and Costs calculated in accordance with Section 5.3 and any other unpaid amounts due or accrued to the Non-Defaulting Party under this Agreement to the date of termination which shall be paid no later than one hundred eighty (180) days after receipt of written notice of an Early Termination Date. Prior to payment of such Termination Payment, (a) the Non-Defaulting Party may exercise any remedies available to it at law or otherwise, including, but not limited to, the right to seek injunctive relief to prevent irreparable injury to the Non-Defaulting Party and/or to enforce any covenant of the Defaulting Party contained herein, and (b) to the extent that Party B is the Defaulting Party, Party B shall take all action necessary or advisable under the Act or other law or regulation creating or governing the Fund to provide for the payment due or to become due at the expiration of such one hundred eighty (180) day period."

(2) The following shall be added to the end of Section 5.2 (as amended by clause (1) immediately above): "Notwithstanding the other provisions of this Agreement, if the Non-Defaulting Party has the right to liquidate or terminate all obligations arising under this Agreement under the provisions of this Article 5 because the Defaulting Party either (a) is the subject of a bankruptcy, insolvency, or similar proceeding, or (b) applies for, seeks, consents to, or acquiesces in the appointment of a receiver, custodian, trustee, liquidator, or similar official for all or a substantial portion of its assets, or (c) otherwise becomes Bankrupt, then this Transaction shall automatically terminate, without notice, as if the Early Termination Date was the day immediately preceding the events listed in Section 5.1."

**(e) Section 5.3 is replaced in its entirety by the following:**

"5.3. Termination Payment Calculations. The Non-Defaulting Party shall calculate the Termination Payment as follows:

(a) Market Value shall be (i) in the case Party B is the Non-Defaulting Party, the present value of the positive difference, if any, of (A) payments under a Replacement Contract based on the Per Unit Market Price, and (B) payments under this Agreement, or (ii) in the case Party A is the Non-Defaulting Party, the present value of the positive difference, if any, of (A) payments under this Agreement, and (B) payments under a Replacement Contract based on the Per Unit Market Price, in each case using the Present Value Rate as of the time of termination (to take account of the period between the time notice of termination was effective and when such amount would have otherwise been due pursuant to the

relevant transaction). The "Present Value Rate" shall mean the sum of 0.50% plus the yield reported on page "USD" of the Bloomberg Financial Markets Services Screen (or, if not available, any other nationally recognized trading screen reporting on-line intraday trading in United States government securities) at 11:00 a.m. (New York City, New York time) for the United States government securities having a maturity that matches the average remaining term of this Agreement. It is expressly agreed that the Non-Defaulting Party shall not be required to enter into a Replacement Contract in order to determine the Termination Payment.

- (b) To ascertain the Per Unit Market Price of a Replacement Contract with a term of less than one year, the Non-Defaulting Party may consider, among other valuations, quotations from leading dealers in energy contracts, the settlement prices on established, actively traded power exchanges, other bona fide third party offers and other commercially reasonable market information.
- (c) To ascertain the Per Unit Market Price of a Replacement Contract with a term of one year or more, the Non-Defaulting Party shall use the Market Quotation Average Price; provided, however, that if there is an actively traded market for such Replacement Contract or if the Non-Defaulting Party is unable to obtain reliable quotations from at least three (3) Reference Market-makers, the Non-Defaulting Party shall use the methodology set forth in paragraph (b).
- (d) In no event, however, shall a party's Market Value or Costs include any penalties, ratcheted demand charges or similar charges imposed by the Non-Defaulting Party.

If the Defaulting Party disagrees with the calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within five (5) Business Days of receipt of the Non-Defaulting Party's calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute. If the parties cannot resolve their differences within five (5) Business Days thereafter, the calculation issue shall be submitted to dispute resolution as provided in Section 10.14 of this Agreement. Pending resolution of the dispute, the Defaulting Party shall pay the full amount of the Termination Payment calculated by the Non-Defaulting Party no later than one hundred eighty (180) days after receipt of written notice of an Early Termination Date. Without limiting any other provisions of this Agreement, the covenants of the Defaulting Party herein shall remain in full force and effect until payment of the Termination Payment."

**(f) Section 6.2** is amended to delete in line 3 of such section the phrase "later of the twentieth (20th) day of each month or"

**(g) Sections 5.5, 5.6, 6.7 and 6.8** are amended by deleting the text in each of such sections and substituting therefor "[Intentionally omitted.]" Section 5.4 is amended by deleting the last sentence of such section.

**(h) New State Taxes.** Add new section 9.3 to read as follows:

**"9.3 New State Taxes.** If any Tax or increase in such Tax (in either case, a "New Tax"), enacted and effective after the date of the Parties' agreement to the terms of a Transaction is imposed by State Authority or by any municipality, county or other non-federal governmental authority located within the boundaries of the State of California acting upon the mandate, request or approval of a State Authority (collectively a "New State Tax") on or with respect to a Transaction and Party A is responsible for the payment of the same, then Party B shall reimburse Party A for the amount of such New State Tax (subject to its right to seek reimbursement therefor from Party A as set forth below) within 5 Business Days after receipt of Party A's invoice therefor, or if such New State Tax increases the cost of delivering Product to Party B over a period of time, Party B shall include the amount to be reimbursed with the payments for the affected Product in accordance with the provisions of Article VI hereof. Any payment by Party B to reimburse Party A for the amount of such New State Tax shall be subject to Party B's subsequent right to verify that Party A is in fact responsible for such New State Tax and the amount for which Party A is responsible. Should Party B dispute the amount of any such payment, and the parties are unable, despite their good faith efforts, to resolve such dispute, Party B may seek reimbursement of such amount by referring the dispute for resolution by arbitration in accordance with the provisions of Section 10.14 below. As used herein the terms "New Tax" means any ad valorem, generation, Btu or energy, gross receipts, sales, use, excise, transaction or other

governmental charge, license, fee or assessment (other than such charges based on net income or net worth), or increase in such charges, enacted and effective after the date of the Parties' agreement to the terms of a Transaction.”

**(i) Actions of State Authority, Local Authority or Public Utility.** Add new section 9.4 to read as follows:

**9.4      Actions of State Authority, Local Authority or Public Utility.**

(a) If any portion of the Generating Units shall be taken or otherwise adversely affected by eminent domain, condemnation or similar action (a “Taking”) by or on behalf, whether directly or indirectly, of a State Authority, a public utility as defined in the California Public Utilities Code (“Public Utility”) or by any municipality, county or other non-federal governmental authority located within the boundaries of the State of California acting upon the mandate, request or approval of a State Authority (a “Condemning Authority”), which adversely affects Party A’s ability to deliver power to Party B pursuant to the terms hereof, then Party A may elect to terminate this Agreement by giving notice to Party B of its election to do so by designating a date no earlier than 5 Business Days after the effective date of such notice, as an Early Termination Date under Section 5.2, in which case Party A shall receive the Termination Payment to the same extent as if Party B had been a Defaulting Party thereunder; provided, however, that in the event that such event results in an increase in the cost at which Party A can deliver power, then Party B may, within 5 Business Days after receipt of any notice from Party A with respect to such taking or other action, elect to prevent a termination resulting solely from such taking or other action by agreeing to reimburse Party A for any such increased cost (net of any payment that Party A has received either directly or through pass through thereof by the operator of a Generating Unit therefor from such Condemning Authority (a “net cost”)), in which event Party B shall reimburse Party A for such increased net cost (subject to its right to seek reimbursement therefor from Party A as set forth in paragraph (c) below) within 5 Business Days after receipt of Party A’s invoice therefor, or if such increased cost increases the cost of delivering Product to Party B over a period of time, Party B shall include the amount to be reimbursed with the payments for the affected Product in accordance with the provisions of Article VI hereof. Party A agrees to make reasonable efforts to mitigate the increased costs it may incur for which it is entitled to be reimbursed by Party B pursuant to this paragraph. It is provided, however, that if the Taking by a Condemning Authority results in a complete or partial loss of Party A’s ability to supply power from a Generating Unit (a “power loss”), then Party A may, at its option, elect to reduce the Contract Quantity (as set forth in the Confirmation) by the amount of such power loss by giving notice to Party B of its election to do so. If Party A so elects, such election shall be deemed to be a termination of this Agreement in respect of the amount of such power loss effective as of the later of (i) 5 Business Days after the date of such notice or (ii) the date of such Taking, and Party A shall be entitled to receive a Termination Payment calculated under the terms of Section 5.3 hereof (as if Party B were the Defaulting Party), with the amount of such Termination Payment to be calculated on a pro rata basis as if Party B had defaulted in respect of the amount of the power loss for the Term of the Agreement.

(b) If the Governor or the Legislature of the State of California or any other State Authority shall by legislation, order, decree, regulation or other legal action affecting Party A’s performance hereunder (but not including any action seeking to enforce current legislation, orders, decrees, regulations, or other legal actions which currently affect Party A’s performance hereunder ) take any action which adversely affects Party A’s ability to deliver Product to Party B pursuant to the terms hereof or increases the costs of Party A in generating, transmitting or otherwise delivering Product to Party B, or should any municipality, county or other non-federal governmental authority located within the boundaries of the State of California take such action upon the mandate, request or approval of a State Authority, then (i) the parties shall attempt to reach agreement as to the sharing of the costs of such action, and (ii) in the event that the parties are unable to reach agreement on the sharing of such costs, Party B shall reimburse Party A for such increased cost as invoiced by Party A (subject to Party B’s right to seek reimbursement therefor from Party A as set forth in paragraph (c) below) within 5 Business Days after receiving Party A’s invoice therefor, or if such increased cost increases the cost of delivering Product to Party B over a period of time, Party B shall include the amount to be reimbursed with the payments for the affected Product in accordance with the provisions of Article VI hereof. Party A agrees to make reasonable efforts to mitigate the increased costs it may incur for which it is entitled to be reimbursed by Party B pursuant to this paragraph.

(c) Any payment by Party B to reimburse Party A for the amount of such increased costs under Paragraphs (a) or (b) above shall be subject to Party B’s right to verify that Party A has in fact incurred such increased costs. Party A shall provide such information regarding such increased costs as Party B shall reasonably request to assist Party B in verifying such costs. Should Party B dispute the amount of such increased costs incurred



by Party A, and the parties are unable, despite their good faith efforts, to resolve such dispute, Party B may seek reimbursement of such amount by referring the dispute for resolution by arbitration in accordance with the provisions of Section 10.14 below.”

(d) If the Governor or the Legislature of the State of California or any other State Authority shall by legislation, order, decree, regulation or other legal action take any action applicable to a Generating Unit which results in an actual reduction of the costs incurred by Party A in generating, transmitting or otherwise delivering Product to Party B pursuant to this Agreement (a “Cost Decrease”), and Party A specifically receives (either directly or through specific cost reduction received from the operator of a Generating Unit) the benefit of such Cost Decrease in connection with deliveries of Product pursuant hereto, or should any municipality, county or other non-federal governmental authority located within the boundaries of the State of California take such action upon the mandate, request or approval of a State Authority, then either party may provide notice to the other party of a Cost Decrease, and (i) the parties shall attempt to reach agreement as to the sharing of the amount of the Cost Decrease, and (ii) in the event that the parties are unable to reach agreement with respect to the same, either party may refer the calculation of the amount of such Cost Decrease (and/or the sharing thereof) for resolution by arbitration in accordance with the provisions of Section 10.14 hereof. It is provided, however, that a Cost Decrease as described above, shall not include any action resulting in a decrease in any ad valorem, generation, Btu or energy, gross receipts, sales, use, excise, transaction or other governmental charge, license, fee or assessment.

**(j) Term of Master Agreement.** Add the following provisions to Section 10.1: “The 2001A Transaction shall terminate on the day following the last day of the Delivery Period, unless terminated sooner pursuant to the express provisions of this Agreement or as a result of an Event of Default.”

**(k) Representations and Warranties.**

(1) The representation set forth in clause (xi) of section 10.2 is modified to add the following phrase at the end of subparagraph (xi): “provided, however, that the representations set forth this subparagraph (xi) and subparagraph (ix) above are not made by Party B, and Party B makes the following representation in lieu thereof:

“With respect to each Transaction (including any Confirmation accepted in accordance with Section 2.3) involving the purchase or sale of a Product or an Option, it is an “eligible contract participant” as defined under Section 1a(12) of the Commodity Exchange Act, as amended by the Commodity Futures Modernization Act of 2000 because it is an agency or department of a governmental entity which (i) has a demonstrable ability, directly or through separate contractual arrangements, to make or take delivery of the underlying commodity; (ii) incurs risks, in addition to price risk, related to the commodity; or (iii) owns and invests on a discretionary basis \$25 million or more in investments.”

(2) Party B represents that it has not granted any Collateral Support (as defined in Section 3.9) under any Related PPA (as defined in Section 3.9 hereto), which Collateral Support remains in effect as of the date of this Agreement.

**(l) Indemnity.** The phrase “To the extent permitted by law” is added at the beginning of the first two sentences of Section 10.4.

**(m) Assignment.**

(1) In Section 10.5, the phrase “either Party may, without the consent of the other Party (and without relieving itself from liability hereunder)” shall be replaced with “Party A (or, with respect to clause (i), (iv) or (v), Party B) may, without the consent of the other Party” and add the following clauses (iv) and (v) in the first proviso in Section 10.5: “(iv) transfer and assign all of its right, title and interest to this Agreement and the Fund to another governmental entity created or designated by law to carry out the rights, powers, duties and obligations of the Department under the Act, or (v) transfer or assign this Agreement to any electrical corporation, as defined in the Act, whose long-term unsecured senior debt is rated BBB or better by Standard & Poor’s Rating Group (a division of McGraw-Hill, Inc.) or its successor (“S&P”), and Baa2 or better by Moody’s Investor Services, Inc., or its successor (“Moody’s”); provided, however, that Party A may assign all of its right, title and interest to this Agreement to any energy company whose long-term unsecured senior debt is rated BBB or better by S&P or Baa2 or better by Moody’s.”

(2) Add the following proviso to the end of Section 10.5: "; provided, further, however, that in the event this Agreement is pledged or assigned to a bond trustee pursuant to clause (i) as collateral for bonds issued by Party B, such bond trustee shall not by virtue of receiving such pledge or assignment for credit purposes be required to agree in writing to be bound by the terms and conditions hereof, it being agreed, however, that (a) such bond trustee shall be bound by the terms and conditions hereof, if it succeeds to any interest under this Agreement, and (b) to the extent that it acquires any rights or interest in the Fund, or any proceeds thereof or rights therein ("proceeds"), it will be bound by the provisions hereof in any administration, allocation or disbursement of such proceeds."

**(n) Governing Law.** In Section 10.6, "New York" shall be replaced with "California."

**(o) General.** The ninth sentence of Section 10.8 is amended to read in its entirety as follows: "No provision declared or rendered unlawful by any applicable court of law or regulatory agency or deemed unlawful because of a statutory change (individually or collectively, such events referred to as "**Regulatory Event**") will not otherwise affect the remaining lawful obligations that arise under this Agreement; and provided, further, that if a Regulatory Event occurs, the parties shall use their best efforts to reform this Agreement in order to give effect to the original intention of the Parties. If the Parties are unable, despite such efforts, to reform this Agreement within thirty (30) days of such Regulatory Event, the adversely affected Party may terminate any adversely affected Transaction(s), in which case the rights of the parties shall be governed by the provisions of Section 10.13(b) below). Written notice shall be given of such an election to terminate at least five (5) Business Days prior to such termination."

**(p) Confidentiality.** The following proviso is added to the end of the first sentence in Section 10.11: "provided, further, that either Party may publicly disclose the type and quantity of Product(s) and the term of the Transaction but shall only express the prices of any Products under this Agreement in the aggregate with the prices of other supplier transactions with Party B so that the prices of any Products under this Agreement, including any unit prices, cannot be readily determined or derived, unless and to the extent required by law to disclose prices in a different manner. Party A has stated to Party B that this Agreement and the terms and conditions hereof (including specifically, but without limitation the unit prices payable for Product hereunder) are highly sensitive, confidential commercial information, the public disclosure of which would cause substantial damage to Party A. Nothing contained herein shall preclude or prevent either party hereto from disclosing any information which such party deems necessary or appropriate to disclose under applicable securities laws or under the rules and regulations of any exchange on which securities of such party or any affiliated party may be traded, or the disclosure of which is otherwise required by applicable law."

Add the following sentence at the end of Section 10.11: "Upon request of Party B, Party A shall use good faith efforts to make available to Party B any information in its possession regarding the status of any of the Generating Units; provided, however, that nothing herein shall require Party A to breach any existing confidentiality agreement with respect to the Generating Units to which it is bound."

**(q) General.** The phrase "Except to the extent herein provided for," shall be deleted from the fourth sentence of Section 10.8, and the phrase "and this agreement may not be orally amended or modified, including by Recording pursuant to Section 2.5" shall be added to the end of such fourth sentence.

**(r) Additional Provisions.** New Sections 10.12, 10.13 and 10.14 are added to Article 10 as follows:

"10.12. No Retail Services; No Agency. (a) Nothing contained in this Agreement shall grant any rights to or obligate Party A to provide any services hereunder directly to or for retail customers of any person.

(b) In performing their respective obligations hereunder, neither Party is acting, or is authorized to act, as agent of the other Party.

10.13. Conditional Termination Rights. (a) Party A may terminate the Transaction if as of the first anniversary date of the Effective Date Party B has been unable to incur indebtedness and issue bonds as evidence thereof under Section 80130 of the Water Code in an amount of no less than three (3) billion dollars, whose long-term unsecured senior debt is rated BBB or better by S&P, and Baa2 or better by Moody's, by providing notice to Party B of its election to do so at any time within one hundred twenty

(120) days from and after such first anniversary date. If Party A provides such notice, then the Transaction shall be terminated five (5) days from the date of such notice, unless earlier terminated pursuant to the other provisions hereof. Under such circumstances, no Termination Payment shall be due (and No Event of Default shall be deemed to exist) by reason of such termination: provided, however, that the rights of termination of the parties with respect to any other termination event shall not be affected by the provisions of this Section 10.13, including, without limitation, the right to declare an Event of Default if any other payment due hereunder is not paid prior to the termination under this section.

(b) Notwithstanding anything contained in Section 10.8, if Party A or Party B or any other State Authority or any municipality, county or other non federal governmental authority, acting upon the mandate, request or approval of a State Authority, ( "Other Governmental Entity"), shall institute (or willingly join in) any action which results in any provision of this Agreement declared unlawful or unenforceable, or which results in a reduction to the Contract Price or other amounts payable hereunder, (the "Instituting Party"), then the party which did not institute (or willingly join in) such action (the "Other Party") shall have the right to terminate this Agreement by giving notice to the Instituting Party or, if the Instituting Party is not a party hereto, then to Party A or Party B, as the case may be, of its election to terminate. Should the Other Party so elect, such termination shall become effective upon 5 Business Days after the date of such notice. If the Instituting Party is Party A or Party B or an affiliate thereof, then the Other Party shall be entitled to receive a Termination Payment calculated under the terms of Section 5.3 hereof as if the party receiving such notice were the Defaulting Party and the Other Party were the non-Defaulting Party., provided that no Termination Payment shall be due in the event that the Instituting Party is an entity other than Party B or an affiliate of Party B. For purposes of this paragraph, an "affiliate" of a party means any entity (which may include a State Authority or Other Governmental Entity) (i) controlling such party, (ii) controlled by such party, or (iii) acting upon the mandate, request or approval of the entity controlling such party. Affiliate of a party also includes an entity under the common control of an entity which controls such party, provided that, if an entity is under the common control of an entity which controls a party, it is only an affiliate of such party within the meaning of this sentence to the extent that it is acting pursuant to the request, mandate or authority of such controlling entity. As used herein, the term "common control" means (a) with respect to Party A, that the applicable entity is under the control (as defined in the definition of Affiliate), directly or indirectly, of another entity which other entity, directly or indirectly, controls Party A, and (b) with respect to Party B, that the applicable entity is subject to the control, directly or indirectly, of another State Authority that has the ability to exercise control over Party B.

(c) This Agreement shall not be subject to change by application of either Party pursuant to the provisions of Sections 205 or 206 of the Federal Power Act, or pursuant to section 451 or other applicable provision of the California Public Utilities Code, absent the agreement of both Parties in a written amendment executed by both parties. It is the express intention of the parties that the authority of the Federal Energy Regulatory Commission to change this Agreement shall be pursuant to the "required by the public interest" standard, as opposed to the "just and reasonable, and not unduly discriminatory or preferential" standard under Section 206 of the Federal Power Act."

(d) Except as expressly provided in this Agreement, nothing in this Agreement shall be construed to limit either Party's right to institute any action against any person, including, a State Authority, for any reason, whether related to the Agreement or otherwise

10.14 Arbitration. All disputes arising under Sections 9.3 and 9.4 of this Agreement which are referred to arbitration in accordance with the terms of such Sections 9.3 and 9.4, which the parties are unable to resolve despite their good faith efforts to do so, shall be resolved by arbitration in the State of California in accordance with the commercial arbitration rules of the American Arbitration Association (the "AAA") (expedited procedures). The AAA shall be instructed to choose an arbitrator (the "Arbitrator") who shall have a minimum of fifteen (15) years experience in respect of accounting or taxation issues (as appropriate) with adequate knowledge of the electric power industry, such that he or she is considered an expert in relevant accounting or taxation matters as applicable to such industry. Notice of a Party's election to submit the matter for arbitration shall be promptly given to the other party, together with a statement

setting forth its reasons for disputing such party's right to the amounts in dispute. Upon delivery of such notice by the party referring the matter to arbitration, each party shall have twenty (20) Business Days to provide the Arbitrator (and the other party) with a statement of its position (with supporting documentation) regarding the matter or matters in dispute together with its best and final offer for settlement of the dispute. The failure to provide a statement of position within this period shall constitute a waiver of a party's right to have such materials considered by the Arbitrator. The Arbitrator shall consider the statements of position submitted by the parties and shall, within twenty (20) Business Days after receipt of such materials, issue his or her decision. The arbitration award shall (a) be in writing and (b) state the conclusions reached and the reasons for such conclusions. All determinations made by the Arbitrator shall be final, conclusive and binding on Party B and Party A. Any award directing reimbursement of amounts paid by a party (the "Successful Party") shall be promptly paid by the other party, together with interest at the Interest Rate, calculated from the date originally paid by the Successful Party to the date paid by the other party. Each of Party B and Party A will pay one-half of the fees of the Arbitrator, but each party shall pay all fees and expenses and the fees of their respective counsel and experts (if required).

**(s) Schedule M.** Schedule M shall be amended as follows:

(1) In Section A, "Act" will mean Sections 80000, 80002, 80002.5, 80003, 80004, 80010, 80012, 80014, 80016, 80100, 80102, 80104, 80106, 80108, 80110, 80112, 80114, 80116, 80120, 80122, 80130, 80132, 80134, 80200, 80250, 80260 and 80270 of the Water Code.

(2) "Special Fund" will mean the Fund.

(3) In Section A, the defined term "Governmental Entity or Public Power System" shall be replaced with the term "Governmental Entity" using the following definition "'Governmental Entity' means the State of California Department of Water Resources separate and apart from its powers and responsibilities with respect to the State Water Resources Development System"; and all references to (A) "Governmental Entity or Public Power System" (and cognates) and (B) "Public Power System" (and cognates) in Schedule M shall be replaced with the new defined term "Governmental Entity" (using the applicable cognate).

(4) In Section D, delete Section 3.5 and replace it with the following:

"3.5 No Immunity Claim California law authorizes suits based on contract against the State or its agencies, and Party B agrees that it will not assert any immunity it may have as a state agency against such lawsuits filed in State court.

(5) In Section G, specify that the laws of the State of California will apply.

(6) Add a new Section H, which shall read as follows:

"3.7. Payments Under Agreement an Operating Expense. Party B covenants and agrees (a) that any and all payments under this Agreement (i) shall constitute an operating expense of the Fund, and shall rank as a first priority payment senior to all other expenses of Party B (and no item of operating expense shall be entitled to any greater priority) and be paid with all other first priority payments, and (ii) shall be paid and payable prior to all bonds, notes or other indebtedness secured by a pledge or assignment of the Trust Estate or payments to the general fund, and (b) to enforce all rights it has or may have with respect to any person or entity holding (whether as trustee or otherwise) any portion of funds available to Party B ("third party holders"), including, without limitation any portion of the Fund or the Trust Estate, to cause such third party holders to make such payments and other disbursement in a manner consistent with this section and the other provisions of this Agreement."

(7) Add a new Section I, which shall read as follows:

"3.8. Rate Covenant; No Impairment. In accordance with Section 80134 of the Water Code, Party B covenants that it will, at least annually, and more frequently as required, establish and revise its revenue requirements (as such term is used in the Water Code), and seek such increases in retail rates from the

Public Utilities Commission sufficient, together with any moneys on deposit in the Fund, to provide for the timely payment of all obligations which it has incurred, including any payments required to be made by Party B pursuant to this Agreement. As provided in Section 80200 of the Water Code, while any obligations of Party B pursuant to this Agreement remain outstanding and not fully performed or discharged, the rights, powers, duties and existence of Party B and the Public Utilities Commission shall not be diminished or impaired in any manner that will affect adversely the interests and rights of the Party A under this Agreement."

(8) Add a new Section J, which shall read as follows:

"3.9. No More Favorable Terms/Negative Pledge. Party B shall not provide in any power purchase agreement (including any confirmation) payable from the Trust Estate (a "Related PPA") for (i) collateral or other security or credit support with respect thereto, (ii) a pledge or assignment of the Trust Estate for the payment thereof, or (iii) payment priority with respect thereto superior to that of Party A (the items in clauses (i), (ii) and (iii) hereof being called "Collateral Support"), without in each case offering such arrangements to Party A. Should Party B provide for any such Collateral Support with respect to a Related PPA, then by virtue of its action in doing so, and without limiting any other rights of Party A under this Agreement, Party B shall be deemed to have granted (without any further action by such Party B) Collateral Support to Party A on the same terms as those granted to the seller under such Related PPA and this agreement shall then be deemed to constitute a security agreement granting such Collateral Support. Party B agrees to promptly provide to Party A notice of any Collateral Support provided pursuant to any Related PPA, including all relevant information regarding such Collateral Support. Party B further agrees to execute and deliver to Party A any financing statement which may be reasonably prepared by Party A, which Party A believes may be necessary in connection with the perfection of such Collateral Support in favor of Party A."

(9) Add a new Section K, which shall read as follows:

"3.10. Sources of Payment; No Debt of State. Party B's obligation to make payments hereunder shall be limited solely to the Fund. Any liability of Party B arising in connection with this Agreement or any claim based thereon or with respect thereto, including, but not limited to, any Termination Payment arising as the result of any breach or Potential Event of Default or Event of Default under this Agreement, and any other payment obligation or liability of or judgment against Party B hereunder, shall be satisfied solely from the Fund. NEITHER THE FULL FAITH AND CREDIT NOR THE TAXING POWER OF THE STATE OF CALIFORNIA ARE OR MAY BE PLEDGED FOR ANY PAYMENT UNDER THIS AGREEMENT. Revenues and assets of the State Water Resources Development System shall not be liable for or available to make any payments or satisfy any obligation arising under this Agreement."

(10) Add a new Section L, which shall read as follows:

"3.11. Application of Government Code and the Public Contracts Code. Party A has stated that, because of the administrative burden and delays associated with such requirements, it would not enter into this Agreement if the provisions of the Government Code and the Public Contracts Code applicable to state contracts, including, but not limited to, advertising and competitive bidding requirements and prompt payment requirements would apply to or be required to be incorporated in this Agreement. Accordingly, pursuant to Section 80014(b) of the Water Code, Party B has determined that it would be detrimental to accomplishing the purposes of Division 27 (commencing with Section 80000) of the Water Code to make such provisions applicable to this Agreement and that such provisions and requirements are therefore not applicable to or incorporated in this Agreement."

**(t) Schedule P.** Schedule P shall be amended as follows: The definition of "Unit Firm" is amended (A) by replacing subclause "(i)" thereof with the following: "(i) if any portion of the specified generation assets are unavailable as a result of a "Forced Outage" (as defined below), or", (B) by adding the following as the penultimate sentence: "In the event of a Forced Outage or receipt by Party A of a notice of a Forced Outage with respect to a Unit (as specified in the Confirmation under "Generating Units" (any of the same being hereafter called a "Generating Unit"))", Party A may reduce the Contract Energy required to be delivered during the period of such Forced Outage by a percentage whose numerator is the Forced Outage amount (expressed in MWs) for such Unit (as

stated in the Confirmation) and whose denominator is 1,000, rounded to the nearest MW, (C) by adding the following sentence at the end thereof: "As used herein, the term "Forced Outage" means the removal or derating (or an anticipated removal or derating) of any portion of a Generating Unit from service for emergency reasons or due to an unplanned component failure or other condition requiring removal or reduction in the electrical output therefrom," and (D) by adding the following sentence "Party A, in its sole discretion, shall have the right, but not the obligation, to supply - at the Delivery Location – an amount of energy, not to exceed the Contract Energy, from any source other than the Generating Units (hereinafter referred to as "Alternative Energy").

IN WITNESS WHEREOF, the Parties have caused this Master Agreement to be duly executed as of the date first above written.

Party A

Allegheny Energy Supply Company, LLC

By: \_\_\_\_\_

Title: \_\_\_\_\_

Phone No: \_\_\_\_\_

Fax: \_\_\_\_\_

Party B

California Department of Water  
Resources, acting solely under the  
authority and powers created by  
AB1-X, codified as Sections 80000  
through 80260 of the Water Code  
(the "Act"), and not under its powers and  
responsibilities with respect to the State  
Water Resources Development System

By: \_\_\_\_\_

Title: \_\_\_\_\_

Phone No: \_\_\_\_\_

Fax: \_\_\_\_\_

## EXHIBIT A

### MASTER POWER PURCHASE AND SALE AGREEMENT CONFIRMATION LETTER

This confirmation letter shall confirm the Transaction agreed to on March 22, 2001 between Allegheny Energy Supply Company, LLC ("Party A") and California Department of Water Resources acting solely under the authority and powers created by AB1-X, codified as Sections 80000 through 80260 of the Water Code (the "Act"), and not under its powers and responsibilities with respect to the State Water Resources Development System ("Party B") regarding the sale/purchase of the Product under the terms and conditions as follows:

Seller: Party A

Buyer: Party B

Product:

☐ Into \_\_\_\_\_, Seller's Daily Choice

☐ Firm (LD)

☐ Firm (No Force Majeure)

☐ System Firm

(Specify System: \_\_\_\_\_)

☒ Unit Firm

(Specify Unit(s): See attached)

☐ Other \_\_\_\_\_

☐ Transmission Contingency (If not marked, no transmission contingency)

☐ FT-Contract Path Contingency ☐ Seller ☐ Buyer

☐ FT-Delivery Point Contingency ☐ Seller ☐ Buyer

☐ Transmission Contingent ☐ Seller ☐ Buyer

☐ Other transmission contingency

(Specify: \_\_\_\_\_)

Contract Quantity: See attached

Delivery Point: See attached

Contract Price: N.A.

Energy Price: See attached



Other Charges: N.A.

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Confirmation Letter  
Page 2

Delivery Period: See attached

Special Conditions: See attached

Scheduling: See attached

Option Buyer: N.A.

Option Seller: N.A.

Type of Option: \_\_\_\_\_

Strike Price: \_\_\_\_\_

Premium: \_\_\_\_\_

Exercise Period: \_\_\_\_\_

This confirmation letter is being provided pursuant to and in accordance with the Master Power Purchase and Sale Agreement dated March 22, 2001 (the "Master Agreement") between Party A and Party B, and constitutes part of and is subject to the terms and provisions of such Master Agreement. Terms used but not defined herein shall have the meanings ascribed to them in the Master Agreement.

[Party A]

Allegheny Energy Supply Company, LLC

[Party B]

California Department of Water Resources,  
acting solely under the authority and powers  
created by AB1-X, codified as Sections  
80000 through 80260 of the Water Code  
(the "Act"), and not under its powers and  
responsibilities with respect to the State  
Water Resources Development System

By: \_\_\_\_\_

Title: \_\_\_\_\_

Phone No: \_\_\_\_\_

Fax: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Phone No: \_\_\_\_\_

Fax: \_\_\_\_\_

## **CONTRACT QUANTITY**

<u>Delivery Period</u>	<u>Quantity</u>	<u>Product</u>
March 23, 2001 through March 31, 2001	150 MW per hour	Peak Energy (6x16)
April 1, 2001 through June 30, 2001	750 MW per hour	Peak Energy (6x16)
July 1, 2001 through September 30, 2001	250 MW per hour	Peak Energy (6x16)
October 1, 2001 through December 31, 2003	250 MW per hour	Base Energy (7x24)
January 1, 2004 through December 31, 2004	500 MW per hour	Base Energy (7x24)
January 1, 2005 through December 31, 2011	1000 MW per hour	Base Energy (7x24)

## **CONTRACT PRICE**

\$61.00 per MWh

## **DELIVERY LOCATION**

Party A shall provide Contract Energy from the Generating Unit(s) to any one or more of the physical point(s) set forth below, as the same may be amended or supplemented by the Parties from time to time.

<u>Facilities</u>	<u>Delivery Point</u>
Redondo Beach Generating Station	At each unit's high side connection to the Redondo 230kV bus.
Huntington Beach Generating Station	At each unit's high side connection to the Ellis 230kV bus.
Alamitos Generating Station	At each unit's high side connection to the Alamitos 230kV bus.
Alternative Energy	South of Path 15 or as otherwise mutually agreed upon by the Parties

"South of Path 15" (SP-15) means the delivery location as defined and described in the California Independent System Operator ("Cal ISO") Tariff Appendix I as SP 15 – Southern Zone as of the date of this Agreement. All deliveries of Alternative Energy to South of Path 15 shall be scheduled as a schedule coordinator-to-schedule coordinator transaction pursuant to the applicable tariff and protocol provisions of the Cal ISO or in a manner as mutually agreed upon by the Parties.

## **GENERATING UNITS**

<b><u>Name</u></b>	<b><u>Unit #</u></b>	<b><u>Designated Capacity (MW)</u></b>
Alamitos	1	44
Alamitos	2	44
Alamitos	3	80
Alamitos	4	80
Alamitos	5	120
Alamitos	6	120
Alamitos	7	33
Huntington Beach	1	54
Huntington Beach	2	54
Huntington Beach	5	33
Redondo Beach	5	55
Redondo Beach	6	44
Redondo Beach	7	120
Redondo Beach	8	120
		1000

## **UNIT AVAILABILITY**

Except as may be excused by Force Majeure, as provided for in Section 1.23, Party A guarantees a minimum Unit Availability Capacity of 90% ("Minimum Availability Threshold"), which 90% shall be determined by reference to the aggregate Designated Capacity of 1000 MW over a calendar year basis. Nothing contained in this provision shall be deemed to limit or otherwise prevent Party A from satisfying the Minimum Availability Threshold by supplying Alternative Energy. Unit Availability Capacity shall be calculated as follows:

$$\text{Unit Availability Capacity} = \frac{\text{Delivered Energy}}{\text{Contract Energy}}$$

Where, for each period below, "Contract Energy" shall mean the Contract Energy set forth below for such period:

March 23, 2001 – March 31, 2001

Contract Energy = 150 MW x 16 hr Peak Energy x (8 days)

April 1, 2001 – June 30, 2001

Contract Energy = 750 MW x 16 hr Peak Energy x (77 days)

July 1, 2001 – Sept. 30, 2001

Contract Energy = 250 MW x 16 hr Peak Energy x (76 days)

Oct 1, 2001 – Dec. 31, 2001

Contract Energy = 250 MW x 24 hr x (92 days)

January 1, 2002 – December 31, 2002

Contract Energy = 250 MW x 24 hr x (365 days)

January 1, 2003 – December 31, 2003

Contract Energy = 250 MW x 24 hr x (365 days)

January 1, 2004 – December 31, 2004

Contract Energy = 500 MW x 24 hr x (366 days)

For each year:

Jan. 1, 2005 – Dec. 31, 2011

Contract Energy = 1000 MW x 24 hr x (365 days\*)

\* Except in 2008, which is 366 days due to leap year

"Base Energy" means energy to be delivered 24 hours per day seven days per week (7x24)

"Peak Energy" means energy to be delivered for the consecutive 16 hour periods beginning at 6:00 a.m. and ending at 10:00 pm Pacific Prevailing Time, excluding Sundays and NERC holidays.

"Delivered Energy" means the total energy, in MWh, calculated on an annual basis, delivered by Party A to the Delivery Point.

Party A will utilize reasonable efforts to ensure that the operator of the Generating Units utilizes Prudent Utility Practices with respect to the Generating Units. Prudent Utility Practice means those practices, methods and procedures, as modified from time to time, that are currently and commonly used in electric utilities to design, engineer, select, construct, operate, and maintain electric power facilities and equipment dependably, reliably, safely, efficiently, and economically, with due regard to the state-of-the-art in the electric power industry, as applied in the Western Systems Coordinating Council (WSCC) area.

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Allegheny Energy Supply

2 World Financial Center  
South Tower-36<sup>th</sup> Floor  
New York, NY 10080  
Tel: 212-236-7044  
Fax: 212-449-6595

### TRANSACTION CONFIRMATION

The following shall confirm the agreement ("Confirmation") reached on April 20, 2001 between Allegheny Energy Supply Company, LLC ("AESC") and California Department of Water Resources, acting sole under the authority and powers created by AB1-X, codified as Sections 80000 through 80260 of the Water Code (the "Act"), and not under its powers and responsibilities with respect to the State Water Resources Development System ("DWR"). The terms of this Confirmation shall constitute a "Transaction" under, and shall be governed by, the terms of the Master Power Purchase & Sale Agreement (the "Master Agreement") between AESC and DWR, dated as of March 23, 2001.

Trade Date: April 20, 2001

Seller: Allegheny Energy Supply Company, LLC  
2 World Financial Center - 36<sup>th</sup> Floor  
New York, NY 10080

Buyer: California Department of Water Resources  
1416 Ninth Street  
Sacramento, CA 95814

Governing Agreement: the Master Agreement

Quantity: 150 MW on-peak for the agreed Schedule

Schedule: 6 X 16, hour ending 0700 through hour ending 2200 (PPT) on-peak Monday through Saturday for the Term, excluding Sunday and NERC holidays

Term: January 1, 2003 through December 31, 2003

Price: \$ 76.00 per MWh

Delivery Point: California ISO - NP 15 Region


Firmness: Firm with liquidated damages

Scheduling: Buyer shall pre-schedule all deliveries of energy by 10:00 AM PPT on the business day preceding the date of delivery


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IF RECIPIENT OF THIS CONFIRMATION DISAGREES WITH ANY OF THE TERMS PRESENTED HEREIN, IT SHALL PROMPTLY NOTIFY THE SENDING PARTY BY TELEPHONE AND BY FACSIMILE TRANSMISSION. FAILURE BY RECIPIENT TO EXECUTE AND RETURN THIS CONFIRMATION OR TO NOTIFY SENDER OF ITS DISAGREEMENT WITHIN TWO (2) BUSINESS DAYS OF THE DATE OF THIS CONFIRMATION SHALL CONSTITUTE THE RECIPIENT'S AGREEMENT TO THE TERMS SET FORTH HEREIN.

ALLEGHENY ENERGY SUPPLY COMPANY, LLC

 JPL  
By: \_\_\_\_\_  
Title:

CALIFORNIA DEPARTMENT OF WATER RESOURCES,  
acting solely under the authority and powers created by AB1-X,  
codified as Sections 80000 through 80260 of the Water Code (the  
"Act"), and not under its powers and responsibilities with respect  
to the State Water Resources Development System

  
By: Thomas M. Hannigan  
Title: Director